

STATE MS.-DESOTO CO.
FILED

Prepared by:
DONALD E. JACKSON
P.O. Box 167
Amarillo, TX 79105-0167
Commitment No. 93103

MAR 17 2 01 PM '00

AFTER RECORDING RETURN TO:
Donald E. Jackson
P.O. Box 167
Amarillo, TX 79105-0167

BK 84 PG 597
W.E. DAVIS CH. CLK.STATE MS.-DESOTO CO.
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LOAN ASSUMPTION AND MODIFICATION AGREEMENT

STATE OF MISSISSIPPI

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KNOW ALL MEN BY THESE PRESENTS:

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COUNTY OF DESOTO

On November 18, 1994, **HORN LAKE PROPERTIES LLC., a Mississippi limited liability company**, executed its one certain Promissory Note payable to the order of **CONSECO MORTGAGE CAPITAL, INC., a Delaware corporation**, in the original principal amount of \$1,390,000.00 and secured its payment by the following:

1. Deed of Trust and Security Agreement, dated **November 18, 1994**, which was filed for record on **November 29, 1994** and recorded in the Recorder's Office of **Desoto County, Mississippi**, in Real Estate Trust Deed Book 737, pages 641-663.
2. Assignment of Leases (Containing a Present Assignment of Lease Proceeds) dated **November 18, 1994**, which was filed for record on the **29th day of November, 1994**, and recorded in the Recorder's Office of **Desoto County, Mississippi**, in Power of Attorney, Contract and Lease Book 67, pages 521-531; and re-recorded on the **29th day of November, 1994**, in the Recorder's Office of **Desoto County, Mississippi**, in Power of Attorney, Contract and Lease Book 67, pages 539-549.
3. Assignment of Rents (Containing a Present Assignment of Rent Proceeds) dated **November 18, 1994**, which was filed for records on the **29th day of November, 1994**, and recorded in the Recorder's Office of **Desoto County, Mississippi**, in Power of Attorney, Contract and Lease Book 67, pages 532-538.
4. Financing Statement filed for record in Recorder's Office of **Desoto County, Mississippi**, on **November 29, 1994** in Real Estate Trust Deed Book 737, pages 730-732.

5. Financing Statement filed for record in the Recorder's Office of the Secretary of State of the State of Mississippi on December 9, 1994, as Document No. 0850867.

Each of the foregoing documents describes and covers the real property which is described on the attached Exhibit "A" to which reference is here made for all purposes.

The November 18, 1994 Promissory Note and all liens and security documents securing its payment were transferred and assigned by CONSECO MORTGAGE CAPITAL, INC. to BENEFICIAL STANDARD LIFE INSURANCE COMPANY by Assignment dated January 4, 1995, which was filed for record in the Recorder's Office of Desoto County, Mississippi, on April 19, 1995, and is of record in Real Estate Trust Deed Book 758, page 133. The November 18, 1994, Promissory Note and all liens and titles securing its payment have been transferred and assigned and are now owned and held by CONSECO ANNUITY ASSURANCE COMPANY, an Iowa corporation.

HORN LAKE PROPERTIES LLC., a Mississippi limited liability company, is selling the property described on the attached Exhibit "A" to WALGREEN CO., an Illinois corporation. As a part of the consideration paid for its purchase of this property, WALGREEN CO. has agreed to assume and be corporately liable for payment of all monies owing under the terms of the November 18, 1994 Promissory Note which is described above herein and to perform all of the obligations imposed upon the Grantor under the terms of the Deed of Trust and Security Agreement and as Assignor under the terms of the Assignment of Leases and the Assignment of Rents as those documents are modified by the terms of this instrument.

CONSECO ANNUITY ASSURANCE COMPANY will agree to the sale of the property and the assumption of the loan by WALGREEN CO. upon the condition that the loan documents are modified to delete all exculpatory language and provisions and provided that WALGREEN CO. agrees that it is corporately liable for the payment of all monies owing under the terms of the Promissory Note and to perform all of the obligations imposed upon Grantor under the terms of the Deed of Trust and Security Agreement and the Assignor under the terms of the Assignment of Leases and Assignment of Rents.

WALGREEN CO. is agreeable to the conditions imposed by the Lender and in consideration of the premises and other good and valuable considerations to and by the parties each to the other, the receipt and sufficiency of which is in all things acknowledged, the parties hereto acknowledge and agree as follows:

1. The Promissory Note dated November 18, 1994, executed by HORN LAKE PROPERTIES LLC. which is payable to the order of CONSECO MORTGAGE CAPITAL, INC. in the original principal amount of

\$1,390,000.00 and which is more fully described above herein is amended by deleting the following language:

It is understood and agreed that Maker has executed this Note for the sole purpose of establishing the existence of the indebtedness secured hereby, and the Holder of this Note agrees by accepting this Note that it will look solely to the Property and the rents, issues and profits therefrom for the payment of indebtedness secured hereby, and all other amounts required to be paid under the terms of the loan documents, or any other document executed in connection herewith, and not to the Maker, his heirs, executors, administrators, and assigns, except as herein provided. Holder further agrees that in connection with any action to foreclose or enforce any provisions of the loan documents or any other documents executed in connection herewith, Holder will not seek any deficiency judgment against Maker, his heirs, executors, administrators, or assigns; provided, however, that nothing in this paragraph shall be, or be deemed to be, a release or impairment of said indebtedness, or the lien created hereby upon the premises, or preclude Holder from suing upon this Note and foreclosing the Deed of Trust that this Note secures in case of any default or defaults hereunder, or under this Note, or from enforcing any of its rights including any remedy of injunctive or other equitable relief, and provided further that Maker shall be and shall remain personally liable for the following:

- (a) all loss, damage, cost, and expense, including, without limitation, attorneys' fees, suffered by Noteholder as a result of a breach of Maker's warranties and representations of this Note or as a result of the intentional or negligent waste of the Property;
- (b) all rents, revenues, issues, and profits from the Property received during the period of any default under this Note or after acceleration of the indebtedness and other sums owing under the note and the Deed of Trust and not applied to payment of the Note or other sums due under the Loan Documents or to the payment of the normal operating expenses of the Property;
- (c) all rents from the Property collected more than one (1) month in advance which are not earned at the time of the occurrence of any event of default under the Deed of Trust and which are not applied to the payment of the Note or other sums due under the Loan Documents or to the payment of normal operating expenses of the Property;
- (d) all insurance proceeds and condemnation awards in respect of the Property which are not applied in accordance with the provisions of this Note;

- (e) any and all of Noteholder/Mortgagee's costs, losses, expenses, damages, or liabilities, including, without limitation, all reasonable attorneys' fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence on, under or about the Property of any materials, waste, or substances defined or classified as hazardous or toxic under federal, state, or local laws or regulations.

2. The Deed of Trust and Security Agreement dated **November 18, 1994**, which is recorded in the Recorder's Office of **Desoto County, Mississippi** in Real Estate Trust Deed Book **737**, pages **641-663** which is more fully described above herein, is amended by deleting paragraphs numbered **19, 25** and **27**.

Paragraph No. 3 is amended by deleting the following language:

"As long as **WALGREEN CO.** is the Lessee and is not in default under the terms of the existing lease, the insurance proceeds will be used and disbursed in accordance with the terms and provisions of the lease."

and by adding the following:

"As long as **WALGREEN CO.** is the owner of the Property covered by this Deed of Trust and Security Agreement and has a net worth of at least \$100,000,000.00, **WALGREEN CO.** may provide the insurance coverages required by this paragraph through its self-insurance program. In the event **WALGREEN CO.** elects to self-insure, it will provide certification to the Noteholder that it is in fact self-insuring and present evidence that it has and maintains the requisite net worth."

3. The Assignment of Leases (Containing a Present Assignment of Lease Proceeds) dated **November 18, 1994**, which is recorded in the Recorder's Office of **Desoto County, Mississippi** in Power of Attorney, Contract and Lease Book **67**, pages **521-531**, and re-recorded in the Recorder's Office of **Desoto County, Mississippi**, in Power of Attorney, Contract and Lease Book **67**, pages **539-549** is released.

4. The Assignment of Rents (Containing a Present Assignment of Rent Proceeds) dated **November 18, 1994**, which is recorded in the Recorder's Office of **Desoto County, Mississippi** in Power of Attorney, Contract and Lease Book **67**, pages **532-538** is released.

5. **WALGREEN CO., an Illinois corporation**, does by these presents ratify and confirm the **November 18, 1994** Promissory Note, the Deed of Trust and Security Agreement, the Assignment of Leases, the Assignment of Rents and Financing Statements securing payment

of the November 18, 1994 loan as the same, or amended, by the terms of this Assumption and Modification Agreement and WALGREEN CO. does by these presents assume and agrees to pay the monies owing under the terms of the November 18, 1994 Promissory Note according to its terms and further agrees to perform all of the obligations imposed upon it as Borrower, Grantor, Assignor or otherwise under the terms of the Deed of Trust and Security Agreement, Assignment of Leases, Assignment of Rents and other loan documents.

6. CONSECO ANNUITY ASSURANCE COMPANY agrees that upon WALGREEN CO.'s acquisition of the property described on Exhibit "A" by warranty deed or other proper conveyance, it may cancel and terminate the Lease dated July 9, 1993 by and between RFS, INC., as Lessor, and WALGREEN CO., as Lessee.

Executed this 30 day of November, 1999, but to be effective from and after the 14th day of March, 2000.

WITNESSES:

Terry Keenan-Kloepfer
Print Name: Terry Keenan-Kloepfer

Lmm
Print Name: Lmm

WALGREEN CO.,
an Illinois corporation

By: Alan M. Resnick
Name: Alan M. Resnick
Vice President

Loreta Kunkel
Print Name: LORETA KUNKEL

Bobbie Van Dyke
Print Name: Bobbie Van Dyke

CONSECO ANNUITY ASSURANCE COMPANY,
an Iowa corporation

By: Robert N. Wilkinson, Jr.
Robert N. Wilkinson, Jr.
Vice President

CORPORATE ACKNOWLEDGMENT

STATE OF TEXAS

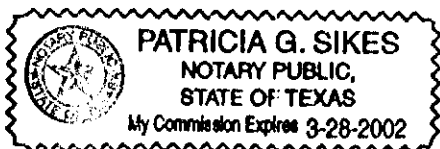
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COUNTY OF POTTER

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Personally appeared before me, the undersigned authority in and for the said county and state, on this 9th day of December, 1999, within my jurisdiction, the within named Robert N. Wilkinson, Jr., who acknowledged that he is Vice President of CONSECO ANNUITY ASSURANCE, an Iowa corporation, and that for and on behalf of the said corporation, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.



My Commission Expires:

Patricia G. Sikes
Notary Public, State of Texas

CORPORATE ACKNOWLEDGMENT

STATE OF ILLINOIS

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COUNTY OF LAKE

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Personally appeared before me, the undersigned authority in and for the said county and state, on this 7th day of December, 1999, within my jurisdiction, the within named Allan M. Kesnick, who acknowledged that he is Vice President of WALGREEN CO., an Illinois corporation, and that for and on behalf of the said corporation, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.



My Commission Expires:

Kenneth G. White, Jr.
Notary Public, Lake County
State of Illinois